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In re Application of
LABRIE, Craig B *et al*
U.S. Application No.: 09/786,305
PCT No.: PCT/US99/13592
Int. Filing Date: 16 June 1999
Priority Date: 19 June 1998
Attorney Docket No.: TRM DV2539
For: APPARATUS FOR DEPLOYING AN
AIR BAG . . .

**DECISION ON
RENEWED PETITION
UNDER 37 CFR 1.47(a)**

This decision is in response to applicants' "Renewed Petition Under 37 CFR 1.47(a)" submitted 06 May 2002.

BACKGROUND

On 06 February 2002, a decision dismissing applicants' petition under 37 CFR 1.47(a) was mailed because applicants failed to meet all of the requirements.

On 06 May 2002, applicants filed the instant renewed petition which was accompanied by, *inter alia*, a new declaration; a copy of Express Mail label No. EV043092622US; a copy of Express Mail label No. EV043092619US; and a copy of USPS Track/Confirm records for Express Mail label No. EV043092622US.

DISCUSSION

Applicants have located co-inventor Craig Labrie and he has signed a declaration. Applicants still are missing the signatures of John J. Kennedy and Vernon A. Daniels.

The decision dated 06 February 2002 stated that applicants failed to submit a declaration or affidavit by a person having firsthand knowledge of the facts, or provide any documentary evidence as required by § 409.03(d) of the Manual of Patent Examining Procedures (MPEP). Applicants also needed to show that a *bona fide* attempt was made to present a copy of the entire application papers to the nonsigning inventor, Mr. Daniels.

In the renewed petition, applicants claim "firsthand knowledge" and state that they submitted "via express mail a copy of the application (specification, including claims, drawings and oath/declaration) to Mr. Daniels's last known address . . . then

forwarded to . . . by the U.S. Postal Service and further, returned to the undersigned as "moved - no forwarding address." Ren.Pet. at ¶ 4. Applicants included a copy of Express Mail label No. EV043092622US which is stamped "RETURN TO SENDER" and "MOVED LEFT NO ADDRESS."

Applicants also declare that "John J. Kennedy is no longer employed by Textron Automotive Company, Inc. and in spite of repeated efforts, the undersigned was unable to locate co-inventor Kennedy." *Id.* at ¶ 6. Applicants also forwarded a copy of the entire application to Mr. Kennedy's last known address. *Id.* at ¶ 7. Applicants submitted a copy of an USPS Track/Confirm records for Express Mail label No. EV043092619US which shows that the addressed/addressee was unknown and returned back to sender.

However, this is not sufficient.

As previously stated, § 409.03(d) of the MPEP explains the requirements needed to show that a diligent effort was made and states, in part:

Where inability to find or reach a nonsigning inventor "after diligent effort" is the reason for filing under 37 CFR 1.47, a statement of facts should be submitted that **fully describes the exact facts which are relied on to establish that a diligent effort was made . . .**

The statement of facts must be signed, where at all possible, by a person having firsthand knowledge of the facts recited therein. Statements based on hearsay will not normally be accepted. Copies of documentary evidence such as **internet searches**, certified mail return receipts, cover letters of instructions, telegrams, that support a finding that the nonsigning inventor could not be found or reached should be made part of the statement. **The steps taken to locate the whereabouts of the nonsigning inventor should be included [in the] statement of facts.** It is important that the statement contain facts as opposed to conclusions. (Emphasis added).

In the instant renewed petition, applicants claim to have used "repeated efforts" to locate Mr. Kennedy but have not specified what steps were taken. In addition, there is no evidence that applicants tried to locate either of the co-inventors using the internet, telephone listing etc.

Applicants must submit a detailed statement of facts that show all the steps used to locate both Mr. Daniels and Mr. Kennedy. Sending an application to the last known address alone is not sufficient, in of itself, to prove that a diligent effort was made and does not meet the requirements of the MPEP.

For these reasons, item (2) of 37 CFR 1.47(a) is still not satisfied.

CONCLUSION

The renewed petition under 37 CFR 1.47(a) is **DISMISSED** without prejudice.

If reconsideration on the merits of this petition is desired, a proper response must be filed within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time may be obtained under 37 CFR 1.136(a).

Please direct further correspondence with respect to this matter to the Assistant Commissioner for Patents, Box PCT, Washington, D.C. 20231, and address the contents of the letter to the attention of the PCT Legal Office.



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